

ISSUE DATE: October 21, 1996

DOCKET NO. G-011/C-96-1062

ORDER DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint of Peoples
Natural Gas against Northern States Power
Company regarding the Construction of
Distribution Facilities

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PROCEDURAL HISTORY

On September 11, 1996, Peoples Natural Gas Company (Peoples) filed a complaint against Northern States Power Company Gas Utility (NSP). Peoples alleged that NSP had violated the letter, spirit, and intent of Minn. Stat. § 216B.01, the basic statute establishing regulation of gas and electric utility service in Minnesota. Peoples objected to NSP's constructing facilities to serve customers in two areas which Peoples stands willing and able to serve. Peoples asked the Commission to open an investigation of the service dispute.

On September 19, 1996, Peoples filed a Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order. Peoples asked the Commission to issue a cease and desist order to preclude NSP from further construction in the subject areas until an investigation is completed and the complaint is resolved.

On October 2, 1996, NSP filed an answer.

On October 3, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

Peoples raised issues regarding service to two areas currently being developed, the Eagandale Corporate Center and the Casselberry Ponds residential subdivision.

A. The Eagandale Corporate Center

The City of Eagan, Dakota County, Minnesota has issued natural gas service franchises to both Peoples and NSP.

The developers of the new Eagandale Corporate Center, now under construction in the City of Eagan, have asked NSP to serve the Center. The Eagandale Center is contiguous to an area currently served by Peoples; it is not contiguous to any area currently served by NSP. NSP has applied to Dakota County for a permit to install a gas main to serve the Center. If the application is granted, NSP will locate the gas main within the County right-of-way.

B. Casselberry Ponds

The City of North Branch, Minnesota has issued franchises to provide natural gas service to both Peoples and NSP.

In May, 1996, the developer of Casselberry Ponds, a subdivision of approximately 150 homes located in North Branch, asked NSP to serve the new development. Casselberry Ponds is contiguous to gas facilities already installed by Peoples; the development is not contiguous to any area served by NSP.

In August, 1996, the City of North Branch granted NSP a construction permit to build the necessary gas main to serve Casselberry Ponds. Since that time, NSP has completed construction of the new facilities with the exception of individual service lines to houses which are still under construction.

II. POSITIONS OF THE PARTIES

A. Peoples

Peoples charged that NSP's actions violated the spirit and intent of Minn. Stat. § 216B.01, which provides in part:

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminished efficiency in service to the consumers...

Peoples argued that NSP unnecessarily duplicated facilities in the two subject areas, because Peoples had stood ready and willing to serve before NSP built to serve (in the case of Casselberry) or sought authority to build (in the case of the Eagandale Center). According to Peoples, the potential of both economic and physical harm flowed from NSP's actions.

Peoples argued that retail users would pay higher rates than necessary due to NSP's duplicative facilities. NSP's actions would deny consumers gas service at the best and least cost. The harm was especially unjust because the choice of providers was being made by the developers, not by the retail users.

Peoples also argued that NSP's actions would create the potential for safety hazards, since gas main might be laid in proximity to existing pipe.

Peoples further objected to NSP's actions because they would tend to escalate disputes between public utilities, contrary to the intent of Minn. Stat. § 216B.01.

Peoples argued that immediate and irreparable harm would ensue if NSP continued constructing facilities to serve Casselberry Ponds and the Eagandale Corporate Center. For this reason, the Commission should order NSP to cease and desist construction and service to the new areas until an investigation is completed and Peoples' complaint is resolved.

B. NSP

NSP countered that the statutes governing the provision of gas service in Minnesota do not create the concept of gas utility service areas. Because gas utilities do not hold exclusive territorial rights, NSP has the right under law to build to serve the two areas.

NSP argued that the Commission need not address safety issues raised by Peoples. The state Office of Pipeline Safety oversees standards for gas pipeline construction and maintenance. The cities and counties in which the facilities will be located will decide if they should grant licenses for NSP to build the gas facilities.

According to NSP, it is also unnecessary for the Commission to reach the economic issues raised by Peoples. NSP has been asked to serve in the new areas and will charge its customers the standard tariffed rates for gas service. NSP assumes the risk of nonrecovery in rates if the Commission decides in a future rate proceeding that the decision to build was imprudent.

For these reasons, NSP argued, no irreparable harm will result from building the facilities, and a cease and desist order is not warranted. NSP has already built into the Casselberry Ponds development; more harm would actually result from requiring NSP to tear up existing facilities than from allowing NSP to serve. Because NSP has not yet received a construction permit to build facilities to the Eagandale Center, the Commission need not preclude the utility from providing service there.

C. The Department of Public Service (the Department)

Although the Department agreed with NSP that there is no legal impediment to NSP's piping to serve the two areas, the Department supported Peoples' request for an investigation. The Department believed that Peoples had raised questions regarding safety which should be explored. The Department also wished to investigate the economics of NSP's decision to pipe the two new areas at this time. Although the prudence of pipeline construction is usually the subject of rate case investigation, the Department noted that issues can be overlooked or underinvestigated in the press of a rate case proceeding.

III. COMMISSION ACTION

A. Introduction

Peoples has brought a complaint proceeding, the merits of which must be addressed before the Commission turns to Peoples' motion for a cease and desist Order. The Commission will therefore analyze the allegations of the complaint.

All parties agree that Minnesota statutes do not establish exclusive service territories for gas utilities. Peoples therefore bases its complaint on Minn. Stat. § 216B.01, which establishes as one goal of utility regulation the avoidance of unnecessary duplication of facilities. Peoples charges that NSP's decision to build to serve the two subject areas, which are currently contiguous to Peoples' existing facilities, has resulted in the unnecessary duplication of facilities. Peoples urges the Commission to find that this service duplication necessitates investigation of serious issues of safety and economics.

The Commission disagrees. After carefully considering the parties' written and oral comments, the Commission finds that Peoples has raised no issue which warrants further investigation. The Commission will analyze Peoples' charges regarding safety and economics in turn.

B. Safety Issues

The Minnesota Office of Pipeline Safety (OPS) sets standards for construction of gas pipelines in Minnesota. The OPS has overseen the development and implementation of NSP's pipeline construction procedures. The OPS has inspected and approved NSP's construction of gas main into the Casselberry Addition.¹

In addition, city and county engineers analyze applications to construct pipeline in city and county rights-of-way. The Casselberry construction has already received engineering approval

¹ Construction of main into the Eagandale Corporate Center has not begun.

and a construction permit. The Eagandale Center application is currently being analyzed by county engineers before a recommendation is made to the Dakota County Board.

Any safety issues relevant to gas service to the Casselberry addition and the Eagandale Center have been addressed by the appropriate bodies. The Commission finds that Peoples has not raised any issue of safety which warrants further investigation in these proceedings.

C. Economic Issues

The Commission has previously addressed economic questions implicit in duplicative gas service. In 1991, the Commission initiated a study group to examine these issues.

On March 31, 1995, the Commission issued an Order² summarizing the conclusions of the study group and terminating the investigation. The Order stated that there were both economic advantages and drawbacks to the provision of gas service by multiple providers. The Commission noted that Minnesota statutes do not establish exclusive gas service areas or require that gas utilities get certificates of authority before piping into a new area, even one already served by another utility. The Commission concluded that any situation regarding multiple gas utility providers could be analyzed in rate case proceedings, on a case by case basis.

No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of the utilities, competed-for customers, and current customers on a case by case basis.

Order at p. 5.

The Commission sees no reason to change its policy developed in the generic investigation--the proper place to analyze the economic consequences of redundant piping is in a rate case proceeding. In a rate case proceeding, the Commission can examine the prudence of utility construction to determine if costs may be placed into rate base. The Commission can also determine if rates resulting from the service addition are just and reasonable. While the Commission sympathizes with the Department's desire to limit the extent of a rate case investigation, in this case there is no substitute for the full context of a rate case proceeding.

The Commission therefore finds that Peoples has not raised any economic issue which warrants further investigation at this time.

² In the Matter of an Inquiry into Competition between Gas Utilities in Minnesota, Docket No. G-999/CI-90-563, ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET.

D. Conclusion

Minnesota statutes do not block NSP from providing service to the Casselberry addition or Eagandale Center. Peoples' has failed in its attempt to invoke Minn. Stat. § 216B.01 to preclude NSP from constructing facilities. Peoples has not raised an issue which sustains its complaint or warrants Commission investigation or resolution at this time.

The Commission will therefore dismiss Peoples' complaint. Since the Commission has made no finding of imminent or irreparable harm, the Commission will not issue a cease and desist Order. Peoples' motion to expedite proceedings and request an interim cease and desist Order is denied.

ORDER

1. The Commission dismisses Peoples' complaint.
2. The Commission denies Peoples' Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order.
3. Docket No. G-011/C-96-1062 is closed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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